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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/408,634	09/30/99	WISNIEWSKI M	AVERP2514USA

EXAMINER	
HYLTON R	
ART UNIT	**PAPER NUMBER**
3727	#9

0M12/0104

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DATE MAILED: 01/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/408,634	Wisiewski et al.
Examiner	**Group Art Unit**
Robin A. Hylton	3727

☒ Responsive to communication(s) filed on *Oct 20, 2000*.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-22* is/are pending in the application.

Of the above, claim(s) *18 and 19* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-17 and 20-22* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of the election of species in Paper No. 8 is acknowledged. The traversal is on the ground(s) that the closure can be applied to a variety of containers. This is not found persuasive because that is precisely why the election of species requirement was set forth. The closure arrangement can in deed be applied to a bag, an envelope, or a box. These are all distinct species of a container. Additionally, a bag, an envelope, a box and a container have acquired different classifications in the art.

The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The abstract of the disclosure is objected to because it is not in a single paragraph, is too long, and contains the objectionable phrase "this invention relates". Correction is required. See MPEP § 608.01(b).

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "the skin" of claims 2,3 and 10 and "the force of the container contents is applied distant from the edge of the separation interface".

Claim Rejections - 35 USC § 112

4. Claims 1-17,20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

There is no antecedent basis for "the skin and base layers" in claims 2,3 and 10.

Claims 15 and 20 lack the structure of a complete sentence, i.e., indefinite articles are missing.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,2,3,4,5,6,7,10,11,15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayward (US 5,353,943). First layer 36 and second layer 35 separate (col. 6, lines 7-11) which can be of different materials (col. 9, lines 16-20), and has a peel strength in the range of 1.5 pounds to 4.5 pounds. This range is about 30-400 grams/2-inch width at 90 degree peel.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward. Wherein an argument can be made that Hayward discloses the claimed invention except for specifically setting forth the material of the second layer as being derived from a styrene, a vinyl polymer, a polyurethane, a an acrylic polymer, or a nylon, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the second layer of a material derived from a styrene, a vinyl polymer, a polyurethane, an acrylic polymer, or a nylon as an alternative material, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Claims 1-7,10,11,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber et al. (US 5,518,790)(Huber) in view of Hayward. Huber discloses the claimed closure except for the different polymer materials of the closure layers and a peel strength therebetween. Hayward discloses a closure comprising two polymer materials and a peel strength in the range of 1.5 pounds to 4.5 pounds. It would have been obvious to one of ordinary skill in the art to modify the closure of Huber in view of Hayward to provide the closure of two different polymeric films having a peel strength in the range of 1.5 pounds to 4.5 pounds as an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claims 1,5-8,10-13,15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns (US 4,690,322) in view of Hayward. Burns discloses an envelope comprising a reusable closure. Burns does not disclose the material of the closure layers 17, 19 to be of different materials nor the peel strength of the closure. Hayward discloses a closure comprising two polymer materials and a peel strength in the range of 1.5 pounds to 4.5 pounds. It would have been obvious to one of ordinary skill in the art to modify the closure of Burns in view of Hayward to provide the closure of two different polymeric films having a peel strength in the range of 1.5 pounds to 4.5 pounds as an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns in view of Eagon (US 4,398,985). Burns discloses an envelope comprising a reusable closure. Burns does not disclose the

material of the closure layers 17, 19 to be of different materials nor the peel strength of the closure. Eagon discloses a closure comprising two polymer materials having a peel strength of 100-120 grams/2 inch width at 180 degrees. It would have been obvious to one of ordinary skill in the art to modify the closure of Burns in view of Eagon to provide the closure of two different polymeric films having an peel strength of about 30-400 grams/1 inch width at 90 degrees peel as an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greer et al. (US 6,032,854)(Greer) in view of Freedman (US 4,925,714). Greer discloses the claimed container except for the multi-layer closure structure. Freedman discloses utilizing a closure having two different polymeric layers which easily separate for opening the container to which it is sealed. It would have been obvious to one of ordinary skill in the art to modify the container of Greer in view of Freedman to provide closures each having two different polymeric layers which easily separate for opening the container to which it is sealed.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various peel seal closures are cited of interest.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah
December 28, 2000

Allan N. Shoap
Supervisory Patent Examiner
Group 3700